

CWA 401 RULE LITIGATION

ISSUE SUMMARY:

The following challenges were filed concerning the Clean Water Act certification rule issued on June 1, 2020:

American Rivers v. EPA, No. 3:20-cv-04636 (N.D. Cal.)

California et al. v. EPA, No. 3:20-cv-04869 (N.D. Cal.)

Delaware Riverkeeper v. EPA, No. 2:20-CV-3412 (E.D. Pa)

South Carolina Coastal Conservation League, et al. v. EPA, No. 2:20-cv-03062-DCN (D.S.C.)

Squamish Tribe, et al. v. EPA, No. 3:20-cv-06137-JCS (N.D. Cal.)

UPCOMING MILESTONES:

- 10/15/20 – EPA submits case management plan in *American Rivers*, *California et al.*, and *Suquamish Tribe* cases (N.D. Cal.)
- 10/22/20 – Case management hearing (N.D. Cal.)
- 11/6/20 – EPA response to *South Carolina Conservation* (D.S.C.) and *Suquamish Tribe* (N.D. Cal.) cases

BACKGROUND:

On June 1, 2020, EPA promulgated regulations revising its almost 50-year old rules implementing CWA section 401. Section 401 prohibits issuance of any federal license or permit in the absence of a State or Tribe certification that any potential point source discharge from the licensed or permitted activity to waters of the United States will comply with specified provisions of the CWA and appropriate State and Tribal requirements. Multiple stakeholders, including NGOs, States and Tribes, have filed five lawsuits in federal district court challenging EPA's new regulations. The lawsuits allege that EPA's new regulations exceed the Agency's authority, are inconsistent with the CWA and Supreme Court precedent, unlawfully impinge on state authority under CWA 401, and are arbitrary and capricious.

KEY EXTERNAL STAKEHOLDERS:

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|--|--|--|--|---|--|
| <input checked="" type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States | <input checked="" type="checkbox"/> Tribes | <input checked="" type="checkbox"/> Media | <input checked="" type="checkbox"/> Other Federal Agency |
| <input checked="" type="checkbox"/> NGO | <input type="checkbox"/> Local Government | <input type="checkbox"/> Other _____ | | | |

MOVING FORWARD:

- EPA OGC is coordinating with DOJ in defending the various lawsuits.
- EPA OW is working with States, Tribes, federal agencies and other stakeholders to implement the new regulations.

LEAD OFFICE/REGION:

OTHER KEY OFFICES/REGIONS:

Lead Office (Litigation) - EPA Office of General Counsel (HQ)

Lead Office (Implementation) – EPA Office of Water (HQ)

All EPA Regions - Rule affects federally licensed and permitted activities in all States and in Indian Country.